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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 MARIO KEITH BROOKS,

12 Defendant.

CR18-79 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Defendant's motion to suppress, docket no. 23, is DENIED. The Court has
16 reviewed all papers and video recordings filed in support of, and in opposition to, the
17 motion, and concludes that an evidentiary hearing is not required because the facts are
18 not in dispute.¹ The Government suggests that the encounter between Tukwila Police
19 Department ("TPD") officers and defendant was merely "social contact," but the Court
20 agrees with defendant that what occurred was a *Terry* stop. *See Terry v. Ohio*, 392 U.S. 1
(1968). TPD officers were dispatched to the scene in response to a 911 call about
21 suspicious activity in the private parking lot of an apartment complex, which had
22 experienced problems with drug-related transactions and loitering and had authorized
23 TPD to warn trespassers and take appropriate enforcement actions. *See* Gov't Exs. 2 & 3.
Upon arriving at the scene, TPD officers observed defendant, who matched the

¹ "[T]he question whether an evidentiary hearing is appropriate rests on the reasoned discretion of the district court." *United States v. Santora*, 600 F.2d 1317, 1320 (9th Cir. 1979). To support a request for an evidentiary hearing, a defendant must demonstrate that a "significant, disputed factual issue" exists. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000) (quoting *United States v. Harris*, 914 F.2d 927, 933 (7th Cir. 1990)).

1 description given by the 911 caller, standing between two occupied vehicles, drinking
2 from a can of beer in a paper bag, and surrounded him. See Def. Exs. 2-5; Gov't Exs. 7-
3 10. The Court concludes that the Terry stop of defendant was justified by reasonable
4 suspicion of trespassing and drug activity, which had been reported by a resident of the
5 apartment complex who had witnessed "heavy foot traffic" around the two vehicles and
6 money exchanging hands. See Gov't Ex. 3. After defendant supplied his name and date
7 of birth, a check run through the law enforcement database revealed that defendant had
8 previously attempted to pull a loaded firearm from his pocket when contacted by police.
9 See Gov't Exs. 5 & 7. One of the TPD officers then asked defendant if he had any
10 weapons, and after an initial denial, defendant indicated that he had a knife. Def. Ex. 2;
11 Gov't Ex. 7. Defendant makes no argument that TPD officers were not permitted during
12 the course of the Terry stop to inquire whether defendant had any weapons, and the Court
13 concludes that, after defendant revealed he had a knife, and in light of the caution about
14 defendant that had been broadcast over the radio by the dispatcher, TPD officers had the
15 requisite "reason to believe that [they were] dealing with an armed and dangerous
16 individual." Terry, 392 U.S. at 27; see id. ("The officer need not be absolutely certain
17 that the individual is armed; the issue is whether a reasonably prudent man in the
18 circumstances would be warranted in the belief that his safety or that of others was in
19 danger.").² Thus, the frisk that resulted in the discovery of the firearm at issue in this
20 case was valid. The Court also finds that defendant consented to the frisk. In response to
21 the question "do you mind if I pat you down," defendant answered "sure." Def. Ex. 2;
22 Gov't Ex. 7.

23
(2) For purposes of computing the time within which trial must commence
under the Speedy Trial Act, defendant has previously waived his right to a speedy trial
from June 4, 2018, until August 28, 2018. See Waiver, docket no. 16. By Order dated
April 25, 2018, docket no. 17, the Court has previously excluded the period of delay from
April 25, 2018, to August 27, 2018. As a result, the Court calculates the speedy trial
deadline as October 11, 2018.

² Defendant cites to United States v. Flatter, 456 F.3d 1154 (9th Cir. 2006), in which the Ninth Circuit
disapproved of a frisk for weapons, but in Flatter, one of the factors considered was the officers' lack of
knowledge about "any past violent conduct" by the suspect. See id. at 1158. In addition, the Ninth
Circuit reasoned that, unlike drug dealing (which was suspected here), the crime under investigation in
Flatter (mail theft) was not usually associated with weapons. Id. Thus, Flatter does not support, but
rather undermines, defendant's motion to suppress. Defendant also relies on United States v. Powell, 666
F.3d 180 (4th Cir. 2011), for the proposition that TPD officers could not rely on the warning about
defendant aired by the dispatcher. Powell, however, did not involve the type of particularized caution at
issue in this case (i.e., about defendant trying to draw a weapon against law enforcement personnel), but
rather concerned "priors," which could have been "yesterday's news or 15 years ago news" and might
have resulting in "a conviction or an exoneration." Id. at 184. In Powell, the Fourth Circuit expressed
concerns about allowing law enforcement officers to "disturb a free person's liberty solely because of a
criminal record" or to "round up the usual suspects." Id. at 188. Those concerns are not implicated in
this matter.

1 (3) A telephone status conference is SET for Wednesday, August 15, 2018, at
11:30 AM. The Court will initiate the call. Counsel shall be prepared to make any
2 objection to the Court's speedy trial calculation and indicate whether they will be
prepared to proceed to trial on Wednesday, October 10, 2018.

3 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
4 record.

5 Dated this 9th day of August, 2018.

6 William M. McCool
7 Clerk

8 s/Karen Dews
9 Deputy Clerk